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No. 73-1966

APR 18

IN THE
Supreme Court of the United States

OCTOBER TERM, 1974

ABERDEEN AND ROCKFISH RAILROAD COMPANY, *et al.*,
Appellants,

v.

STUDENTS CHALLENGING REGULATORY AGENCY
PROCEDURES (S.C.R.A.P.), *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

**MEMORANDUM OF THE ABERDEEN AND ROCKFISH
RAILROAD COMPANY, ET AL., RESPECTING THE
SUGGESTION OF MOOTNESS**

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April 1975

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SCRAP-EDF have filed a post-argument memorandum suggesting mootness. For the reasons stated below, the appellant railroads believe that the case is not moot; they reiterate that any dismissal of the appeal on mootness grounds should include vacation of the judgment below and a directive that the case be dismissed by the District Court; and they oppose most emphatically any suggestion that the case be remanded for further consideration of the mootness question.

First, the appellant railroads do not believe that this case can be deemed moot. The practical likelihood that the ICC would reach a different result in *Ex Parte No. 281* after the further elaborate proceedings contemplated by the District Court is now remote; in two subsequent environmental impact statements deemed more extensive by SCRAP-EDF, the ICC has reached essentially the same conclusion that such limited increases on recyclables will not have a significant adverse effect on the environment. Nevertheless, the possibility of a different result is normally sufficient to prevent a claim of mootness.

Second, if nevertheless the Court does determine that the case is moot, the railroads urge again that any dismissal of the appeal on mootness grounds be accompanied by an order vacating the judgment below and directing dismissal of the case in the District Court.¹ In their reply brief (pp. 4-5), the railroads set forth the authorities that confirm that "the established practice of the Court . . . is to reverse or vacate" the judgment below when a case becomes moot on appeal. The SCRAP-EDF memorandum (p. 5) appears to acknowledge this rule.

Third, the railroads strongly oppose the alternative suggestion of SCRAP-EDF (p. 5) that the case might be remanded to the lower court for a further inquiry into the mootness issue. The grounds asserted by

¹ This would not, of course, invalidate the existing orders in *Ex Parte No. 281*. Those orders are a necessary element in the railroads' present rate structure. The fact that there have been subsequent rate increases since that time does not alter the matter, because such subsequent increases are normally expressed in terms that assume the existence of the rates established in prior proceedings such as *Ex Parte No. 281*.

SCRAP-EDF for dismissing the case as moot involve no factual inquiry and can be resolved by this Court quite as easily as by the District Court. This litigation involving *Ex Parte No. 281* has now been pending since May 1972; the case has just been briefed and argued in this Court; and it is appropriate that the case be finally resolved now, either on the merits or on mootness grounds, without yet another round of briefs, arguments, and further proceedings in the District Court.

Respectfully submitted,

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